

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

<b>BILLY GENE MARSHALL,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. CIV-14-1181-HE</b>
	)	
<b>H.A. RIOS, Warden L.C.F.;</b>	)	
<b>STOUFER, Medical Director</b>	)	
<b>L.C.F.; R. PATTON, Director</b>	)	
<b>Oklahoma Department of</b>	)	
<b>Corrections,</b>	)	
	)	
<b>Defendants.</b>	)	

**REPORT AND RECOMMENDATION**

Plaintiff filed a civil rights suit, Doc. 1, and United States District Court Judge Joe Heaton referred the matter to the undersigned Magistrate Judge for initial proceedings pursuant to 28 U.S.C. § 636(b)(1)(B), (C). Based on Plaintiff's failure to make his initial partial filing fee payment, the undersigned recommends that the court dismiss the action without prejudice.

**I. Analysis.**

After Plaintiff filed his original complaint, the undersigned advised him that he must either pay the \$400.00 filing fee or seek leave to proceed without prepayment of the fee. Doc. 5. In response, Plaintiff filed an amended complaint, Doc. 7, and an application for leave to proceed in forma pauperis. Doc. 9. The undersigned granted Plaintiff's application, and

ordered him to make a \$1.43 initial partial filing fee payment on or before December 23, 2014. Doc. 10. Plaintiff sought an extension of time to pay, Doc. 11, and the undersigned gave him until January 16, 2015. Doc. 14. That deadline has past, and Plaintiff has yet to make his initial partial filing fee payment. So, the undersigned recommends that the court dismiss Plaintiff's action without prejudice to refiling. *See* LCvR 3.3(e) ("Failure to pay the filing fees by the date specified, to seek a timely extension within which to make the payment, or show cause in writing by the date specified for payment shall be cause for dismissal of the action without prejudice to refiling."); *see also* LCvR 3.4(a); *Freeman v. Colo. Dep't of Corrs.*, 396 F. App'x 543, 543-44 (10th Cir. 2010) (affirming the district court's dismissal of inmate's complaint after plaintiff failed to "pay the initial partial filing fee" or "show cause why [he] could not pay the fee").

## **II. Recommendation and notice of right to object.**

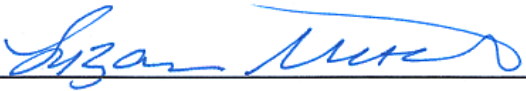
For the reasons set forth above, the undersigned recommends that the court dismiss the amended complaint without prejudice.

The undersigned advises Plaintiff of his right to file an objection to the report and recommendation with the Clerk of this Court by February 12, 2015, in accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2). The undersigned further advises Plaintiff that failure to make a timely

objection to the report and recommendation waives the right to appellate review of both factual and legal questions contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

The court's adoption of this recommendation will moot Plaintiff's pending motions, Docs. 12, 13, 15, and will terminate the referral in the present case.

ENTERED this 23rd day of January, 2015.

  
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SUZANNE MITCHELL  
UNITED STATES MAGISTRATE JUDGE